

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 WILLIE T. SMITH,

7 Plaintiff,

Case No. 3:15-cv-00373-RCJ-WGC

ORDER

8 v.

9 RENEE BAKER, et. al.,

10 Defendants.
11

12 Plaintiff initiated this action in July of 2015, concerning the alleged confiscation of his
13 mail. On January 26, 2016, District Judge Jones issued a screening order that dismissed the
14 complaint with prejudice. (ECF No. 3.) Plaintiff appealed the dismissal. The Ninth Circuit affirmed
15 dismissal of the procedural due process claim regarding confiscation of his mail, and also affirmed
16 the dismissal of his equal protection claim. (ECF No. 11.) The Ninth Circuit reversed the dismissal
17 of Plaintiff's First Amendment claim regarding the confiscation of his incoming mail, finding
18 Plaintiff's allegations that his mail was seized without a legitimate penological purpose, stated a
19 colorable claim. (*Id.*)

20 On July 12, 2017, District Judge Jones entered an order, consistent with the Ninth Circuit's
21 findings, that Plaintiff could proceed against Doe Defendants 1 and 2 with respect to the First
22 Amendment mail confiscation claim. (ECF No. 14.) The court allowed Plaintiff to conduct pre-
23 service discovery to ascertain the true identity of the defendants, and directed the Attorney
24 General's Office to enter a limited notice of appearance to respond to three interrogatories aimed
25 at discovering the identity of the defendants. (*Id.*)

26 The court subsequently allowed Plaintiff to substitute Officer A. Loting for Doe 1.
27 (ECF No. 24.) It was later clarified that the Officer's name was Amos Lofing. (ECF No. 36.)

28 In an order issued on August 27, 2018, the court noted that Lofing had not yet been served,

1 and ordered the Attorney General's Office to file a notice indicating whether it would accept
2 service on behalf of Lofing, or file his last known address under seal. (ECF No. 52.)

3 The following day, the Attorney General's Office filed a Notice of Inability to Accept
4 Service with respect to Lofing. (ECF No. 53.) The notice indicates that counsel requested the last
5 known address for Lofing, but it is a post office box in Arizona, and service cannot be
6 accomplished on a post office box. Counsel undertook efforts to request from NDOC a review of
7 archived or paper files for Lofing that might reveal a street address, but was informed there is no
8 other address available for Lofing.

9 Plaintiff has **ninety-days** from the date of this Order to complete service with respect to
10 Lofing or he may be dismissed without prejudice, absent a showing of good cause as to why service
11 was not timely made. Fed. R. Civ. P. 4(m). The court acknowledges Plaintiff may face difficulty
12 given that the last known address for Lofing is a post office box, and Plaintiff cannot effectuate
13 proper service on an individual under Rule 4 by serving Lofing at a post office box.

14 **IT IS SO ORDERED.**

15 DATED: August 30, 2018.

16 
17 WILLIAM G. COBB
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28